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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
) No. 10-0508
DEPARTMENT OF TRANSPORTATION)
OF THE STATE OF ILLINOIS,)
for and in behalf of the)
PEOPLE OF THE STATE OF ILLINOIS)
-VS-)
COMMONWEALTH EDISON COMPANY,)
and UNKNOWN OWNERS)
)
Petition for approval of the)
taking or damaging of certain)
properties owned by a public)
utility in DuPage County,)
Illinois by exercising the)
right of eminent domain)

Chicago, Illinois

December 15, 2010

Met, pursuant to adjournment, at
1:30 o'clock p.m.

BEFORE:

MR. JOHN RILEY,
Administrative Law Judge

1 APPEARANCES:

2 MR. DOUGLAS G. FELDER
3 203 North La Salle Street
4 Suite 2300
5 Chicago, Illinois
6 appearing for Department
7 of Transportation of the
8 State of Illinois

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20 MR. MARK L. GOLDSTEIN
21 3019 Province Circle
22 Mundelein, Illinois
appearing for
Commonwealth Edison Company

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXMNR.
ERSKINE					
KLYCE	100				

E X H I B I T S

RESPONDENT'S	FOR IDENTIFICATION	IN EVIDENCE.
No. 1		110

1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Docket 10-0508.
3 This is a petition by the Department of
4 Transportation of the State of Illinois for and in
5 behalf of the People of the State of Illinois versus
6 Commonwealth Edison Company and unknown owners for
7 approval of the taking or damaging of certain
8 property owned by a public utility in DuPage County,
9 Illinois, by exercising the right of eminent domain.

10 Counsel for the Illinois Department of
11 Transportation, would you enter an appearance,
12 please.

13 MR. FELDER: Yes. Thank you, Judge. For the
14 Department of Transportation, Doug Felder,
15 F-e-l-d-e-r. My phone number's 312-634-3509,
16 address 203 North La Salle, Suite 2300, Chicago,
17 60601. And with me from the department is
18 Mr. Erskine, E-r-s-k-i-n-e, Klyce, K-l-y-c-e, who's
19 an engineer with the Department of Transportation.

20 Thank you.

21 MR. GOLDSTEIN: Yes. On behalf of Commonwealth
22 Edison Company, Mark L. Goldstein, 3019 Province

1 Circle, Mundelein, Illinois, 60060. My telephone
2 number is 847-949-1340.

3 JUDGE RILEY: Thank you. And I continued this
4 matter a couple times since our last evidentiary
5 session.

6 Mr. Felder, it was I think at least
7 once on your behalf or at your request. Has
8 anything changed? Has anything occurred that's
9 changed the status of this proceeding?

10 MR. FELDER: No. We are going to need to
11 conclude the hearing -- proceed with the hearing and
12 hopefully conclude it today. We haven't been able
13 to conclude it otherwise.

14 JUDGE RILEY: All right. Mr. Goldstein, when
15 last we met for evidentiary hearing, we had
16 Mr. Machevsky (phonetic) on the stand.

17 MR. GOLDSTEIN: That's correct, Judge.

18 JUDGE RILEY: He had finished his direct
19 testimony. And it's my understanding he has not
20 appeared here today for cross-examination; is that
21 correct?

22 MR. GOLDSTEIN: That is correct. Mr. Machevsky

1 is not here. That's based upon an agreement between
2 Mr. Felder and I. With respect to his coming in
3 today to be cross-examined, my understanding is that
4 Mr. Felder has no cross-examination for him and in
5 lieu thereof which is to put on another witness.

6 JUDGE RILEY: Mr. Felder, is that correct?

7 MR. FELDER: Yes.

8 JUDGE RILEY: Okay. So you are waiving
9 cross-examination of Mr. Machevsky?

10 MR. FELDER: Yes.

11 MR. GOLDSTEIN: As a preliminary matter, Judge, I
12 would like to, again for the record, ask that
13 Respondent's Exhibit 1, the permanent easement
14 document, be admitted into evidence.

15 JUDGE RILEY: Okay. Hold on. How was that
16 marked?

17 MR. GOLDSTEIN: Respondent's -- I don't remember
18 if it's Respondent's or Com Ed Exhibit 1, one or the
19 other. I don't remember exactly.

20 JUDGE RILEY: I have got Respondent's Exhibit 1.

21 All right. Mr. Felder, we have got
22 renewal of the motion for admission of the easement,

1 Respondent's Exhibit 1 into evidence. What's your
2 response to that?

3 MR. FELDER: We object to the admission of that
4 easement into evidence. And, Judge, I just ask that
5 maybe you can defer that until we put on the
6 rebuttal testimony of Mr. Klyce. It shouldn't take
7 too long.

8 JUDGE RILEY: I will hold the ruling in abeyance.

9 Mr. Goldstein, did you have anything
10 further in Commonwealth Edison's case in chief?

11 MR. GOLDSTEIN: I have nothing further. I would
12 like to inquire, since Mr. Klyce has previously
13 testified in this matter, what he's going to be
14 testifying to. I just have no idea at this point in
15 time.

16 JUDGE RILEY: Mr. Felder, response.

17 MR. FELDER: A few brief points about the
18 easement.

19 JUDGE RILEY: About the easement?

20 MR. FELDER: Yes.

21 JUDGE RILEY: So it sounds like it's almost in
22 lieu of cross-examination.

1 MR. FELDER: That's essentially what it is.
2 Rather than bring Mr. Machevsky back here, I just
3 decided to bring Mr. Klyce here and ask him a few
4 questions just to clear up matters for the record.

5 JUDGE RILEY: All right. Mr. Goldstein.

6 MR. GOLDSTEIN: I may be objecting to the
7 testimony. So let's hear what it is first.

8 JUDGE RILEY: Mr. Felder, please call your
9 witness.

10 MR. FELDER: The petitioner, Department of
11 Transportation, would call Mr. Erskine Klyce as a
12 witness in the case.

13 (Witness sworn.)

14 You can sit here if you like.

15 MR. KLYCE: Sorry. I apologize.

16 JUDGE RILEY: That's all right. I feel kind of
17 relieved. I thought you were bringing that to me.

18 MR. KLYCE: No. No.

19 ERSKINE KLYCE,
20 called as a witness herein, having been first duly
21 sworn, was examined and testified as follows:

22

1 DIRECT EXAMINATION

2 BY

3 MR. FELDER:

4 Q. Mr. Klyce, would you please state your name
5 and spell it for the court reporter.

6 A. My name is Erskine Klyce, E-r-s-k-i-n-e,
7 last name K-l-y-c-e.

8 Q. And, Mr. Klyce, you are employed by the
9 Department of Transportation, correct?

10 A. That's correct.

11 Q. And briefly again your responsibilities in
12 your employment with the department?

13 A. I am employed in the Bureau of Land
14 Acquisition as a condemnation engineer.

15 Q. Okay. And I want to show you what is marked
16 as Exhibit, I believe, B to the petition that's been
17 filed in this case, which is a copy of the plat of
18 highways regarding the taking in this case and ask
19 you if you recognize that document.

20 A. Yes, I do.

21 Q. And just briefly -- to sort of reorient the
22 judge to the situation, can you briefly describe the

1 prove-up project that's involved and requires the
2 acquisition of Com Ed's property at this time?

3 MR. GOLDSTEIN: I'm going to object, Judge.

4 Mr. Klyce briefly testified in this matter and he's
5 just rehashing the same testimony that he had
6 before. It's cumulative and I object.

7 MR. FELDER: It's preliminary. I was trying to
8 get your Honor just refreshed.

9 JUDGE RILEY: I'm going to overrule it. Go
10 ahead.

11 THE WITNESS: Illinois Route 56 is being expanded
12 or widened from one lane in each direction to two
13 lanes in each direction.

14 The parcel in question today is on the
15 eastern portion of the project along the west
16 portion of Winfield Road.

17 MR. FELDER: Q. Okay. And what does the
18 department need the property for at this time?

19 A. The property --

20 MR. GOLDSTEIN: Continuing objection, your Honor.

21 JUDGE RILEY: Understood.

22 Please proceed.

1 MR. FELDER: Thank you.

2 THE WITNESS: The property is being sought for
3 acquisition to be able to perform any and all
4 highway-related matters as a result of our
5 improvements.

6 MR. FELDER: Q. Okay. The improvement involved
7 in that intersection of Butterfield Road or Illinois
8 65 and Winfield Road, is that correct?

9 A. That's correct.

10 Q. Now I think we established earlier -- in an
11 earlier session of this hearing that the department
12 attempted to but did not acquire the easement it
13 needs from Com Ed through negotiations; is that your
14 understanding?

15 A. That is my understanding.

16 Q. What interest in the property does the
17 department require from Com Ed at this time to build
18 the improvement project?

19 A. At this location in question what we are
20 attempting to acquire a permanent easement from
21 Com Ed to be able to facilitate this improvement.

22 Q. And what rights does IDOT seek in the

1 permanent easement area that's needed at this time
2 to build the project?

3 A. The type or the length of time?

4 Q. The rights that's federal for highway?

5 A. Yes. Yes. They are being sought for any
6 and all highway purposes.

7 Q. And what's the permanent or the length of
8 time for the easement that it is seeking?

9 A. The length is for in perpetuity.

10 Q. What rights does IDOT seek in the permanent
11 easement area -- I'm sorry. What, if anything, can
12 terminate this permanent easement that IDOT is
13 seeking at this time?

14 A. It's my understanding that we are attempting
15 to seek the easement without termination rights
16 subject to the department declaring this area as
17 excess land and then going through the necessary
18 policy process of putting it up for public auction.

19 Q. In other words then, the permanent easement
20 that IDOT is seeking it is seeking perpetuity; is
21 that correct?

22 A. That is correct.

1 Q. And what, if anything, can terminate this
2 permanent easement?

3 A. Nothing can terminate the permanent easement
4 except for our determination that it may be deemed
5 excess and have non-use to the department, but at
6 this time there would be no termination.

7 Q. All right. So the only thing that could
8 terminate the easement that we are seeking would be
9 IDOT's conclusion that it was a declaration that
10 this may be abandoned or excess property and then
11 that it would then dispose of it as allowed by or
12 required by law under the appropriate Illinois
13 statutes?

14 A. That's correct. Excuse me.

15 MR. FELDER: That's all I have for Mr. Klyce.

16 JUDGE RILEY: Thank you.

17 Mr. Goldstein, do you have any
18 cross-examination?

19 MR. GOLDSTEIN: Obviously, I have a continuing
20 objection to this, Judge. This is not in any way,
21 shape, or form rebuttal testimony to the testimony
22 that Mr. Machevsky gave in this proceeding.

1 These questions could have been asked
2 at the time that Mr. Klyce was first introduced as a
3 witness in this proceeding, and it adds nothing to
4 the record and it has absolutely nothing do with the
5 permanent easement document that is sought to be
6 introduced by Com Ed into this record.

7 JUDGE RILEY: And your objection goes to?

8 MR. GOLDSTEIN: Relevance, cumulative. This
9 could have been brought up at his original time he
10 testified. He was excused as a witness. He was
11 cross-examined at that time. This is giving IDOT
12 several bites of an apple, and it's unfair to
13 Com Ed.

14 JUDGE RILEY: Mr. Felder, was Mr. Klyce brought
15 here today as what we consider a rebuttal witness to
16 Mr. Machevsky?

17 MR. FELDER: Either rebuttal or continuation of
18 our case in chief.

19 MR. GOLDSTEIN: He's already been excused as a
20 witness, Judge. He can't keep coming back and back
21 and back as a witness, and there was no rebuttal of
22 anything that Mr. Machevsky testified to.

1 Mr. Machevsky focused his entire
2 testimony on the permanent easement document that we
3 sought to introduce into this record.

4 JUDGE RILEY: Anything further, Mr. Felder?

5 MR. FELDER: As it relates to the objection?

6 JUDGE RILEY: Right.

7 MR. FELDER: No.

8 JUDGE RILEY: Mr. Goldstein, I need as
9 comprehensive a record as I possibly can get. This
10 is going to have to be decided by the Commission and
11 I am going to have to take a record of this. There
12 won't be a settlement I understand.

13 MR. GOLDSTEIN: It has nothing to do with whether
14 or not Mr. Klyce has the opportunity to testify over
15 and over again, Judge. It's just totally unfair to
16 Commonwealth Edison Company for him to come back and
17 give testimony which has absolutely nothing at all
18 to do with Mr. Machevsky's testimony, and you cannot
19 allow that in this record.

20 I understand that, you know, the
21 Commission needs a comprehensive record. There is a
22 comprehensive record as of yesterday, but not today.

1 JUDGE RILEY: All right.

2 MR. GOLDSTEIN: And, you know, this is just
3 absolutely wrong to try to put this testimony into
4 this record, and I object strongly.

5 JUDGE RILEY: It's understood, but I'm going to
6 allow the testimony.

7 And, Mr. Felder, did you have anything
8 further that you wanted to offer with regard to the
9 record?

10 MR. FELDER: No. I believe that we did discuss
11 it previously, and maybe I should ask to mark the
12 plat, which I think everyone agreed to but I don't
13 think was formally introduced. The plat of highway
14 I don't know if counsel has an objection to it or
15 not.

16 MR. GOLDSTEIN: No.

17 MR. FELDER: I believe it's attached as an
18 exhibit to the petition.

19 JUDGE RILEY: That is the same plat that
20 was -- that's marked as Exhibit B and attached to
21 the application?

22 MR. FELDER: Yes.

1 JUDGE RILEY: It is the same thing?

2 MR. FELDER: It's the same thing. This one has
3 some highlighting on it just to highlight the area.

4 MR. GOLDSTEIN: Is it without the marking? That
5 is a little different.

6 MR. FELDER: It is a little different. I mean,
7 this is the easement you can see right here, but
8 this has the marking.

9 MR. GOLDSTEIN: You have got it marked.

10 MR. FELDER: Otherwise, I can give you a copy of
11 this. Whatever -- just to complete the record, I
12 just wanted to make sure that that was offered and
13 if your Honor is satisfied with the exhibit.

14 JUDGE RILEY: If it's already part of the record,
15 it's already been --

16 MR. FELDER: Okay.

17 JUDGE RILEY: It's already been submitted with
18 the application.

19 MR. FELDER: Very good.

20 JUDGE RILEY: And there's no difference in the
21 actual schematic itself, just some highlighting on
22 there.

1 MR. FELDER: Correct.

2 JUDGE RILEY: Okay. If it's just a reprint of
3 Exhibit B attached to the application of the
4 petition, we'll just let it go at that.

5 MR. GOLDSTEIN: Thanks.

6 JUDGE RILEY: And now, as far as I can tell, the
7 only other issue left is your renewed motion for the
8 admission of Respondent's Exhibit 1.

9 MR. GOLDSTEIN: Correct.

10 JUDGE RILEY: And your motion still stands?

11 MR. GOLDSTEIN: Absolutely.

12 JUDGE RILEY: Mr. Felder.

13 MR. FELDER: We object, your Honor, to the
14 admission of the easement. We are here to seek
15 authority to acquire permanent rights for the People
16 of the State of Illinois to construct the highway
17 and we haven't been able to conclude the matter
18 through voluntary negotiations. So we are asking
19 for an order based on what you have heard and what
20 you have learned through this process.

21 MR. GOLDSTEIN: That has nothing at all to do
22 with whether that exhibit is admissible or not,

1 Judge. We have had a witness testify with respect
2 to the permanent easement document. There's been no
3 cross-examination. His testimony stands and his
4 testimony in this proceeding is unrefuted and,
5 therefore, the exhibit should be admitted.

6 MR. FELDER: Judge, the agreement was part of an
7 attempt to acquire the property through
8 negotiations. It's failed. That's why we are here.

9 MR. GOLDSTEIN: Whether the negotiations failed
10 or not, Judge, Mr. Felder would still be here before
11 your Honor seeking an order of the Commission.

12 JUDGE RILEY: I'm going to admit Respondent's
13 Exhibit 1. As I said, I need all the documentation
14 and then as full a record as I can get, so I'm going
15 to admit Respondent's Exhibit 1 as submitted.

16 (Whereupon, Respondent's
17 Exhibit No. 1 was
18 received in evidence.)

19 There are no other witnesses?

20 MR. FELDER: No.

21 JUDGE RILEY: There is no other documentation?

22 MR. GOLDSTEIN: No.

1 JUDGE RILEY: Then do we want to set a briefing
2 schedule?

3 MR. FELDER: I would like to submit a proposed
4 order and then counsel can make exceptions, or
5 submit his, or we can simultaneously submit a
6 proposed order.

7 JUDGE RILEY: The way it stands right now, I'm
8 going to prepare the proposed order. Mr. Felder,
9 the e-docket is a public record.

10 MR. FELDER: Right.

11 JUDGE RILEY: You are perfectly free to file a
12 pre-proposed order and I will look at it for what
13 merit it has, but I'm ultimately going to prepare a
14 proposed order based on the record. I'm going to
15 issue a proposed order based on the record.

16 MR. FELDER: What is the time frame -- if we
17 could go off the record.

18 JUDGE RILEY: Certainly. Is there any objection?

19 MR. GOLDSTEIN: No.

20 JUDGE RILEY: We'll go off the record.

21 (Off the record.)

22 Let's go back on the record. The

1 Commission, as I said, meets pre-bench on
2 January 4th, and the bench session on the 5th I
3 think will be virtually impossible. There's a
4 regular open meeting on the 11th. That may still
5 be very tough inasmuch as my deadline for getting
6 an order to that regular open meeting will be
7 January 5th. It might be doable, but I doubt it,
8 then there's another pre-bench on the 19th, and a
9 bench session on the 20th of January, and a regular
10 open meeting on February 1st --

11 MR. FELDER: January 20th.

12 JUDGE RILEY: -- and a regular bench session and
13 regular open meeting February, March, April, May,
14 and likely for the rest of the year.

15 MR. FELDER: February 1st was the regular open
16 meeting?

17 JUDGE RILEY: Right. If the parties would rather
18 submit their own proposed orders and file them on
19 e-docket, I'll take them into consideration. But
20 how would that be different than a brief?

21 MR. GOLDSTEIN: I would rather just have you
22 issue an order and I'll file exceptions. I may

1 propose another order, but it would be part of
2 the --

3 JUDGE RILEY: And you say --

4 MR. GOLDSTEIN: -- process.

5 JUDGE RILEY: -- you will forego the briefing
6 schedule?

7 MR. GOLDSTEIN: Yes.

8 MR. FELDER: I would just --

9 JUDGE RILEY: I'm not going to preclude
10 Mr. Felder from filing a brief. If he wants to put
11 something on e-docket, that's fine.

12 MR. FELDER: Whatever we do, I would like to try
13 to do it as early a fashion and as expedited a
14 fashion as we can to attempt to meet our scheduling
15 but understanding that the schedule is the schedule
16 and we'll have to do our best.

17 JUDGE RILEY: How long would it take you to file
18 a brief or a proposed order?

19 MR. FELDER: I can file a proposed order probably
20 by Monday or Friday.

21 JUDGE RILEY: And you are certainly free to do
22 so. As I said, I'm going to wait for the

1 transcript. Again, there's going to be the standard
2 two week turnaround, although I don't want to pin
3 down the court reporter to a deadline she can't
4 meet. I'm sorry.

5 MR. FELDER: But you will be here next week and
6 not the following week?

7 JUDGE RILEY: No. I'll be gone next week.

8 MR. FELDER: Oh, you will be gone next week?

9 JUDGE RILEY: I'm sorry. I'm sorry. I said that
10 incorrectly. I'm gone the week of Christmas. I'll
11 be gone from the 20th through the 24th.

12 MR. FELDER: Okay. So between Christmas and New
13 Years?

14 JUDGE RILEY: Between Christmas and New Years,
15 I'll be here. Excuse me. I'll be from the 27th
16 through the 30th.

17 MR. FELDER: Well, I guess that would be our
18 target date. I would be willing to try to get
19 something done during that week.

20 JUDGE RILEY: Okay. All right. And,
21 Mr. Goldstein, do I understand that you have pretty
22 much submitted everything you were going to submit?

1 MR. GOLDSTEIN: But for exceptions --

2 JUDGE RILEY: Exceptions, right.

3 MR. GOLDSTEIN: -- for which I'm sure I'll take
4 exception.

5 JUDGE RILEY: Would the parties object --
6 ordinarily it's two weeks and a week for exceptions.

7 MR. GOLDSTEIN: We can do it one week and one
8 week.

9 JUDGE RILEY: One week and one week?

10 MR. FELDER: That would be fine.

11 JUDGE RILEY: That would be fine?

12 MR. GOLDSTEIN: Sure.

13 JUDGE RILEY: All right. So anything further
14 that we need to cover?

15 MR. GOLDSTEIN: I don't think so.

16 MR. FELDER: No.

17 JUDGE RILEY: All right. Then I'll direct the
18 court reporter to mark this heard and taken. Thank
19 you very much.

20 MR. GOLDSTEIN: Thank you, Judge.

21 HEARD AND TAKEN.

22